

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON

  
JOSEPH R. GOODWIN  
UNITED STATES DISTRICT JUDGE

<b>IN RE: ETHICON, INC., PELVIC REPAIR SYSTEM PRODUCTS LIABILITY LITIGATION</b>	<b>Master File No. 2:12-MD-02327 MDL No. 2327</b>
<b>THIS DOCUMENT RELATES TO ALL CASES</b>	<b>JOSEPH R. GOODWIN U.S. DISTRICT JUDGE</b>

**DEFENDANTS' MOTION FOR REDUCTION OF PROLIFT DISCOVERY POOL**

In response to recent voluntary dismissal of one of Defendants' Discovery Pool selections, Defendants Ethicon Inc. and Johnson & Johnson ("Defendants") hereby request that the Prolift Discovery Pool be reduced from 10 to 8 plaintiffs to mitigate the prejudice caused by this dismissal. Defendants also request that they be permitted to select which plaintiffs' selection should be dropped from the Discovery Pool.

**BACKGROUND**

The Court previously ordered that each side select 5 plaintiffs, for a total of 10, to constitute the Prolift Discovery Pool. Both sides submitted their selections on September 6, 2013. Defendants' selections included Plaintiff Terri Lee Bell (Case No. 2:12-cv-06175), who is represented by Aylstock Witkin Kreis & Overholtz. Mrs. Bell's deposition began on 11/18/2013 but was not completed. Thereafter, in response to repeated requests for dates to complete that deposition and to schedule others, Mrs. Bell's counsel advised that she wished to voluntarily dismiss her claims with prejudice. She filed her Stipulation of Dismissal with

Prejudice on 12/03/2013. (Doc. #23, Case No. 2:12-cv-06175 (12/03/2013). Though Mrs. Bell has stipulated to dismissal with prejudice, the dismissal does not cure the prejudice to defendants in having one of their five discovery selections pulled from the group of 10 cases.

### **ARGUMENT**

Even with a dismissal with prejudice, unfair prejudice to Defendants remains. With this dismissal, Defendants are deprived their right to select bellwether candidates on equal footing as Plaintiffs, and Defendants' choices now comprise a smaller proportion of the total Discovery Pool.

In order to remedy the obvious prejudice to Defendants by Plaintiffs effectively striking a defense Discovery Pool selection, Defendants request that the bellwether selection pool be reduced to 8 plaintiffs so that the pool will be comprised of 4 Plaintiffs' picks and 4 Defendants' picks. Defendants request that the Court permit Defendants to select the plaintiff to strike from the Discovery Pool selections.

In the alternative, Defendants request the opportunity to designate a replacement selection; that the Court extend all applicable deadlines with respect to that selection to allow time for discovery as afforded for other Discovery Pool selections; and that the date for nominating bellwether selections be extended so that the replacement selection can be evaluated as a possible bellwether nominee.

### **CONCLUSION**

For the foregoing reasons and in the interest of justice, Defendants respectfully request that the Court order the Discovery Pool be reduced from 10 to 8 plaintiffs, permitting Defendants to select the plaintiffs' discovery pool pick to strike. In the alternative only, Defendants request that the Court extend all applicable deadlines to allow equal time for discovery of a substitute defense selection to replace Mrs. Bell.

Dated: December 23, 2013

Respectfully submitted,

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